

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MUNIR JAFFERALI LADHA,

Defendant-Appellant.

UNPUBLISHED

April 21, 2015

No. 321097

Washtenaw Circuit Court

LC No. 13-000110-FH

Before: O'CONNELL, P.J., and FORT HOOD and GADOLA, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for unlawful use of an automobile, MCL 750.414. Defendant was sentenced to 12 months' probation. We affirm.

The facts of this case revolve around a 1989 Volvo, which the prosecution claimed defendant gave the victim in satisfaction of a gambling debt that he owed her. In August 2012, the victim loaned defendant the Volvo, and defendant never returned it. At trial, defendant claimed that he owned the Volvo, and, only after he ended his romantic relationship with the victim, she claimed ownership of the vehicle and reported him to the police. After a jury trial, defendant was convicted, and now appeals.

Defendant first argues that there was insufficient evidence to support his conviction. We disagree.

"When reviewing challenges to the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could conclude that the prosecution proved all the essential elements of the crime beyond a reasonable doubt." *People v Johnson-El*, 299 Mich App 648, 651; 831 NW2d 478 (2013). This Court "must draw all reasonable inferences and examine credibility issues in support of the jury verdict" and "must not interfere with the jury's role as the sole judge of the facts." *People v Malone*, 287 Mich App 648, 654; 792 NW2d 7 (2010).

The elements of unlawful use of an automobile are: (1) the automobile did not belong to defendant; (2) defendant had lawful possession of the automobile; and (3) defendant intentionally used the automobile beyond his lawful authority, knowing he did not have lawful authority to use the automobile in such a manner. *People v Hayward*, 127 Mich App 50, 60-61; 338 NW2d 549 (1983); MCL 750.414.

We hold that there was sufficient evidence to support defendant's conviction. First, the victim's testimony established that the automobile did not belong to defendant. The victim testified that defendant gave her the vehicle because he owed her money. According to the victim, she titled, licensed, insured, performed maintenance, and kept the Volvo at her home. She produced documentary evidence to support that the Volvo was titled in her name. Second, there was sufficient evidence presented that defendant had lawful possession of the vehicle; the victim testified she agreed to loan defendant the Volvo. Third, there was sufficient evidence to show that defendant intentionally used the Volvo beyond his lawful authority, knowing he did not have lawful authority to use it in such a manner. The victim loaned defendant the vehicle so that defendant could help his brother move from Georgia. Defendant drove the Volvo to Georgia, never returned the vehicle to the victim, and he testified that he loaned it to a friend. At the time of trial, the vehicle had not been returned to the victim. The victim testified that she requested, on multiple occasions, that defendant return the Volvo to her. Thus, evidence was presented that defendant used the Volvo in a manner unauthorized by the victim. Accordingly, viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence to convict defendant. Defendant asserts that his version of the events from trial was more credible than the victim's testimony. However, this Court will not "interfere with the jury's determinations regarding the weight of the evidence and the credibility of the witnesses." *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008).

Defendant next argues that the jury's verdict was against the great weight of the evidence. We disagree. "We review for an abuse of discretion a trial court's grant or denial of a motion for a new trial on the ground that the verdict was against the great weight of the evidence." *People v Lacalamita*, 286 Mich App 467, 469; 780 NW2d 311 (2009). "An abuse of discretion occurs when a trial court chooses an outcome falling outside the range of reasonable and principled outcomes." *Id.*

The circuit court may order a new trial if it concludes the verdict is against the great weight of the evidence. MCR 2.611(A)(1)(e). A verdict is against the great weight of the evidence when "the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *Lacalamita*, 286 Mich App at 469. "[In] general, conflicting testimony or a question as to the credibility of a witness are not sufficient grounds for granting a new trial." *People v Lemmon*, 456 Mich 625, 643; 576 NW2d 129 (1998) (citation omitted). Exceptions exist only where "the testimony contradicts indisputable physical facts or laws[,] . . . is patently incredible or defies physical realities . . . [,] where a witness's testimony is material and is so inherently implausible that it could not be believed by a reasonable juror [,] . . . or where the witness's testimony has been seriously impeached and the case marked by uncertainties and discrepancies." *Id.* at 643-644 (internal quotations and citations omitted).

Defendant asserts that the victim presented no evidence to support her version of events, whereas he presented two witnesses, Robert Perry and Jeri Farnell, who testified in support of defendant's version of the events. While defendant's evidence may have raised a question as to the victim's credibility, "conflicting testimony or a question as to the credibility of a witness are not sufficient grounds for granting a new trial." *Id.* at 643. The victim's testimony did not contradict indisputable physical facts or laws, was not patently incredible, was not so inherently implausible that it could not be believed, and was not seriously impeached such that the case was

marked by uncertainties and discrepancies. *Id.* at 643-644. Accordingly, the evidence produced at trial did not preponderate so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand, and the trial court did not abuse its discretion when it denied defendant's motion for a new trial. *Lacalamita*, 286 Mich App at 469.

Defendant next argues that he received ineffective assistance of counsel. We disagree. Defendant preserved the issues by filing a motion for a new trial with the trial court, which the trial court denied. *People v Sabin (On Second Remand)*, 242 Mich App 656, 658; 620 NW2d 19 (2000). However, the trial court did not hold an evidentiary hearing, so our review is limited to the facts on the record. *People v Chapo*, 283 Mich App 360, 369; 770 NW2d 68 (2009), citing *People v Wilson*, 242 Mich App 350, 352; 619 NW2d 413 (2000).

"To demonstrate ineffective assistance of counsel, a defendant must show that his or her attorney's performance fell below an objective standard of reasonableness under prevailing professional norms and that this performance caused him or her prejudice." *People v Nix*, 301 Mich App 195, 207; 836 NW2d 224 (2013), citing *People v Armstrong*, 490 Mich 281, 289-290; 806 NW2d 676 (2011). "To demonstrate prejudice, a defendant must show the probability that, but for counsel's errors, the result of the proceedings would have been different." *Nix*, 301 Mich App at 207.

First, defendant asserts that his counsel was ineffective for failing to object to a jury instruction that was read, which explained the difference between unlawfully driving away an automobile and unlawful use of an automobile without authority. Defendant claims that because he was not charged with unlawfully driving away an automobile, the instruction referencing the crime laid the groundwork for an improper compromise verdict and confused the jury, undermining the reliability of the verdict.

Generally, jury instructions "must include all elements of the charged offenses and any material issues, defenses, and theories if supported by the evidence." *People v McGhee*, 268 Mich App 600, 606; 709 NW2d 595 (2005). "Jury instructions must clearly present the case and the applicable law to the jury." *Id.* The challenged instruction was as follows:

The difference between the two offenses, i.e., the offense of using a motor vehicle without authority, which the defendant is charged with, and the offense of unlawfully driving away a motor vehicle, is this: To be guilty of unlawfully driving away a motor vehicle, the defendant must have taken possession of the vehicle unlawfully in the first place. Unlawful use of a vehicle, on the other hand, is a lesser offense that applies if defendant got possession of the vehicle lawfully in the first place but then used it in a way he knew was unauthorized.

We conclude that although the above jury instruction mentioned an offense for which defendant was not charged, it clearly presented the case by informing the jury of the actual charge and by emphasizing a disputed element of the charged crime, specifically that the unlawful use of a vehicle without authority required defendant to have lawful possession of the vehicle in the first place. *Id.* The jury instruction reflected the prosecution's theory of the case, which was that defendant started out with lawful possession of the Volvo but it was subsequently

revoked. *Id.* On this record, we do not conclude that counsel was objectively unreasonable for failing to object. See *Nix*, 301 Mich App at 207.

Second, defendant claims his counsel was ineffective for failing to sufficiently impeach the victim's testimony. Specifically, defendant claims that the victim previously made two false police reports that two vehicles belonging to defendant were stolen. Defendant has the burden of establishing the factual predicate for his claim of ineffective assistance of counsel. *People v Carbin*, 463 Mich 590, 600; 623 NW2d 884 (2001). There is no record support that the alleged police reports exist or that defense counsel was aware of the reports. Thus, we are unconvinced that defendant's trial counsel was ineffective on this ground.

Third, defendant argues that trial counsel was ineffective for failing to call Leono Sharon and Susan Vasquez as witnesses. The decision "to call or question witnesses [is] presumed to be [a] matter[] of trial strategy." *People v Russell*, 297 Mich App 707, 716; 825 NW2d 623 (2012). The failure to call or question witnesses can constitute ineffective assistance of counsel only when it deprives defendant of a substantial defense, which is a defense that would have made a difference in the outcome of the trial. *Id.* Sharon's and Vasquez's affidavits show that while their testimony would have supported defendant's testimony, it was duplicative of evidence presented at trial. Thus, we cannot conclude from the record that defendant was deprived of a substantial defense. Accordingly, we find defendant's ineffective assistance of counsel challenges lack merit.

Finally, defendant argues that the trial court abused its discretion when it failed to correct inaccuracies in the Presentence Investigation Report (PSIR). "We review the sentencing court's response to a claim of inaccuracies in defendant's PSIR for an abuse of discretion." *People v Spanke*, 254 Mich App 642, 648; 658 NW2d 504 (2003).

When the trial court is faced with responding to challenges to the accuracy of information in the PSIR, "the court has wide latitude in responding to these challenges." *Id.*

The court may determine the accuracy of the information, accept the defendant's version, or simply disregard the challenged information. Should the court choose the last option, it must clearly indicate that it did not consider the alleged inaccuracy in determining the sentence. If the court finds the challenged information inaccurate or irrelevant, it must strike that information from the PSIR before sending the report to the Department of Corrections. [*Id.* at 648-649 (internal citations omitted).]

Defendant's PSIR stated that the offense was his first felony conviction; however, it was sentenced as a misdemeanor. Defendant requested that the PSIR be changed to state that this was his first felony conviction, but was sentenced as a misdemeanor. The trial court did not strike the language. Unlawful use of an automobile¹ is properly classified as a felony because it

¹ Unlawful use of an automobile is punishable by imprisonment for not more than 2 years. MCL 750.414.

is an offense that is punishable by more than one year of imprisonment. See *People v Smith*, 423 Mich 427, 445; 378 NW2d 384 (1985); MCL 761.1(g). Accordingly, the trial court did not abuse its discretion when it failed to change the disputed language in the PSIR, regardless of the fact that defendant received a misdemeanor sentence.

Affirmed.

/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood
/s/ Michael F. Gadola